

In response to the EBA Consultation Paper published 9 November 2023, regarding draft guidelines on complaints-handling of credit servicers under Directive (EU) 2021/2167 (the “**Directive**”).

## Introduction

Axactor Group is a next-generation multinational debt management company operating in Norway, Sweden, Finland, Germany, Spain, and Italy, with an ambitious growth strategy. Axactor acquires and collects on own portfolios of non-performing loans (79% of income) and provides third-party debt collection services (21% of income). The company has approximately 1,400 employees.

Axactor supports the EU’s efforts to improve the NPL secondary market within the Union and believes that the goals set out to be achieved by the Directive and its related guidelines is to the benefit of all stakeholders in the credit lifecycle. However, for this to be achieved, it is important to acknowledge the specificities of the credit servicing industry in adapting the specific guidelines and consequently what separates credit servicing from those of the products and services offered by the banking-, investment- and insurance sectors.

Axactor supports the application of the Joint Committee Guidelines (“**JC Guidelines**”) to Credit Servicing in principle but would urge the EBA to reconsider applying the existing definition of a “Complaint” also for credit servicing, as detailed below.

## Consultation question

- 1) Do you consider there to be a reason why the requirements on complaints handling for credit servicers under Directive (EU) 2021/2167 that are being proposed in this CP should differ from the ones in the existing JC Guidelines on complaints handling that are applicable to other financial institutions across the banking, investment and insurance sectors?**

Yes. Under the current JC Guidelines a “Complaint” is defined as “[a] statement of dissatisfaction addressed to a firm by a natural or legal person relating to the provision of [...] (viii) credit servicing activities as defined in Article 3(9) of CSD”. Axactor believes that this definition is far too broad to be applied for credit servicing, and that there would be an imminent risk that applying this definition would render it impossible to effectively manage borrower complaints after implementation. Axactor disagrees with EBA’s view that there is sufficient similarity between Credit Servicing and other types of products and services offered by the banking-, investment- and insurance sectors, currently subject to the JC Guidelines.

Where banks, investment managers and insurance companies offer services to natural- and legal persons by virtue of a mutual agreement and interest in receiving and offering said products and services, credit servicing is a consequence of these same contractual agreements having been terminated for breach of contract, specifically non-performing loans.

Non-performing loans are credit agreements under which a borrower over time has defaulted payments and had their credit terminated by the original creditor (e.g. a bank) and later sold. In Axactor’s experience, most borrowers are dissatisfied with the situation where a credit agreement has been terminated, and subsequently sold to a Credit Purchaser for collection by a Credit Servicer. This is an entirely understandable reaction, but nonetheless, it is a consequence of the borrower’s own breach of contract. The process of servicing (defaulted) non-performing loans is a legitimate and necessary

mechanism to ensure financial stability and a well-functioning credit market, irrespective of the borrower's subjective perception of the situation. The borrower shall however enjoy strong consumer protection, and the Credit Servicer shall ensure that it complies with applicable good debt collection practices. However, mere "*statements of dissatisfaction*" should not qualify as a "Complaint" with respect to "credit servicing activities", and this should be clearly stated in applicable guidelines. There is a material difference between a borrower and a bank on the one hand, and a borrower and a Credit Servicer on the other. Where a borrower is a customer of the bank under a valid credit agreement, the borrower is a debtor towards the Credit Purchaser under a terminated credit agreement (serviced by a Credit Servicer). If a borrower is dissatisfied with the services provided by a bank, investment firm or an insurance undertaking, they are free to elect another supplier of these services or products. On the other hand, if a borrower is dissatisfied with a Credit Servicer they are not (and cannot be) in a position to choose the service provider. As such, the threshold to consider something a "Complaint" should be higher in respect of credit servicing, than for the sectors in which the borrower is a customer of each provider of banking-, investment-, or insurance services as there is no product or service being delivered – only a remaining payment obligation on the part of the borrower towards the Credit Purchaser. Axactor appreciates the connotation that the complaint should relate to "credit servicing activities" but still believe that this does not sufficiently accentuate the material differences between credit servicing and other types of services covered by the same paragraph. The term "*credit servicing*" misleadingly suggests that it is a service provided for the borrower's benefit, when in reality it operates independently of the borrower's consent or involvement. It includes unilateral actions that the borrower neither chooses nor necessarily agree with, to resolve outstanding debt. It is crucial to recognize this difference in the guidelines, that while credit servicing may be classified as a "service", it is not one solicited or desired by the borrower, challenging the traditional understanding of service provisioning in a consumer context, and consequently the term "Complaint".

In view of the above, Axactor believes that the definition of a "Complaint" in the context of credit servicing, should apply some level of qualification, which distinguishes between a borrower's general dissatisfaction due to the situation of having a credit agreement terminated, and actual (or alleged) *wrongdoings* by the Credit Servicer in their performance of the credit servicing activities. The latter being the type of complaints handling that the guidelines set out to address, and what should qualify as a "Complaint".

By qualifying the definition of a "Complaint", Axactor believes that the JC Guidelines could otherwise be applied, offering the intended level of harmonization, whilst at the same time addressing the differences between the services and products offered by the banking-, investment, and insurance sectors on the one hand, and "credit servicing activities" on the other. In respect of the cost-benefit argument, the proposed solution to simply amend the definition of "Complaint" in view of "credit servicing activities" seems like a reasonable compromise, to account for the industry's views and needs. On the contrary, applying the JC Guidelines as-is, treating any "*statement of dissatisfaction*" by a borrower as a "Complaint", would undoubtedly create a massive administrative burden for the Credit Servicer(s), without offering the borrowers any increased (consumer) protection. Axactor would assume this consequence to be unintended by the EBA, and hope that the views expressed herein have added some value to the discussion.

Axactor appreciates the opportunity to provide comments and remain available for any follow-up questions on the contact details provided in the submission form.